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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/047,138      | 01/15/2002  | Luciano Salice       | 298-146             | 4238             |

7590 02/25/2004

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EXAMINER

TRAN, HANH VAN

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3637

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/047,138

Applicant(s)

SALICE, LUCIANO

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2, 6-8 and 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6, 7, 9.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This is the First Office Action on the Merits from the examiner in charge of this application in response to applicant's election paper #11 dated 12/3/2003.

#### ***Election/Restrictions***

2. Claims 2, 6-8, and 10-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11. Regarding claims 8 and 20, since said claims recited sweeping motion over the pivot axle, which limitation is not disclosed in the elected Species II, thus claims 8 and 20 are also withdrawn from further consideration as being drawn to a nonelected Species.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3-5 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. More specifically, the preamble indicates subcombination of a lifting apparatus, while in the body of the claim in at least one instance there is a positive recital of structure indicating that the combination of a lifting apparatus and a cupboard having the folding flaps is being claimed, i.e., line 7, "longer arm (15) is linked to the lower leaf(5)". The examiner cannot be sure if applicant's intent is to claim merely the lifting apparatus or the lifting apparatus in

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combination with cupboard having the folding flaps. Applicant is required to clarify what the claim is intended to be drawn to the subcombination of a lifting apparatus or the combination of a lifting apparatus and cupboard having the folding flaps, and to amend the claimed language accordingly. For the purpose of this examination, the examiner is considering that the claim is drawn to the combination of a lifting apparatus and the cupboard having folding flaps. Claim 1, the terms "longer arm" and "shorter lever arm" lacks antecedent basis. The term "characterized in that" is vague, thus indefinite for failing to clearly define what the term represents.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 3, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany 9403699 in view of USP 5,938,306 to Lambright et al.

Germany 9403699 discloses a cupboard having two-leaf folding flap, such as shown in Fig 1a-b, having an upper leaf 3 and a lower leaf 4; and a lifting apparatus comprising a two-

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armed lever pivotally mounted to a side body around a horizontal pivot axle 15 and having a first end/longer lever arm linked to the lower leaf 4 and a second end/shorter lever arm being guided in a cam guide fixed to the body via a slide block 14; wherein the pivot axle 15 penetrates an elongate opening of the lever (said opening is defined as the aperture of the lever 8 for receiving the pivot axle 15) . The differences being that Germany 9403699 does not disclose a gas compression spring element having one end pivotally connected to the body part and the other end pivotally connected to the longer lever arm.

Lambright et al discloses a cupboard having two-leaf folding flap, a gas compression spring element having one end pivotally connected to the body part and the other end pivotally connected to the longer lever arm in order to facilitate opening and closing of the folding flap. Therefore, it would have been obvious to modify the structure of Germany 9403699 by providing a gas compression spring element having one end pivotally connected to the body part and the other end pivotally connected to the longer lever arm in order to facilitate opening and closing of the folding flap, as taught by Lambright et al, since both teach alternate conventional cupboard having two-leaf folding flap structure, used for the same intended purpose, thereby providing structure as claimed.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Germany 9403699, as modified, as applied to claim 1 above, and further in view of USP 5,882,099 to Salice.

Germany 9403699, as modified, discloses all the elements as discussed above except for the longer lever arm consists of two parts which are displaceable relative to one another and fixable to one another.

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Salice discloses a cupboard having two-leaf folding flap, a two-armed lever having a longer lever arm and a shorter lever arm; wherein the longer lever arm, such as shown in Figs 5-7, having two parts 25,26 which are displaceable relative to one another and fixable to one another in order to provide a length adjustable lever arm. Therefore, it would have been obvious to modify the structure of Germany 9403699, as modified, by providing the longer lever arm with two parts which are displaceable relative to one another and fixable to one another in order to provide a length adjustable lever arm, as taught by Salice, since both teach alternate conventional cupboard having two-leaf folding flap structure, used for the same intended purpose, thereby providing structure as claimed.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heidmann et al, Scherrer, Hayakawa, Liegeon et al, Peitz, Nawrath, and Schmid et al all show structures similar to various elements of applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT

February 22, 2004

  
**Hanh V. Tran**  
**Art Unit 3637**